

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9 WESTERN DIVISION  
10

11 FREDRICK D. FRANKLIN, ) No. CV 08-04126-AHM (VBK)  
12 Plaintiff, ) ORDER TO SHOW CAUSE  
13 v. )  
14 LOS ANGELES SHERIFF'S )  
15 DEPARTMENT, et al., )  
16 Defendants. )  
\_\_\_\_\_ )

17 I

18 INTRODUCTION

19 Fredrick D. Franklin (hereinafter referred to as "Plaintiff")  
20 filed a civil rights complaint pursuant to 42 U.S.C. §1983 in the  
21 United States District Court for the Central District of California on  
22 June 30, 2008, pursuant to an "Order re Leave to File Action Without  
23 Prepayment of Full Filing Fees."

24 Plaintiff alleges that Defendants Compton Sheriff's Department  
25 and various John Doe Sheriff's officers violated his constitutional  
26 rights under the Fifth, Eighth and Fourteenth Amendments to the United  
27 States Constitution. Plaintiff alleges that Defendants used  
28 unreasonable and unnecessary force that caused injury to Plaintiff.

1 Defendants' actions constituted police brutality. (Plaintiff's  
2 Complaint at 3-10.)

## 3 4 II

### 5 STANDARD OF REVIEW

6 In accordance with the mandate of the Prison Litigation Reform  
7 Act of 1995 ("PLRA"), the Court must screen the Complaint to determine  
8 whether the action is frivolous or malicious, fails to state a claim  
9 on which relief may be granted, or seeks monetary relief against a  
10 defendant who is immune from such relief. 42 U.S.C. §1997e(c)(1); see  
11 also 28 U.S.C. §§1915A, 1915(e)(2)(B).

12 The Court's screening of the Complaint is governed by the  
13 following standards. A complaint may be dismissed for failure to  
14 state a claim for two reasons: (1) lack of cognizable legal theory; or  
15 (2) insufficient facts under a cognizable legal theory. Balistreri v.  
16 Pacifica Police Department, 901 F.2d 696, 699 (9<sup>th</sup> Cir. 1990). Since  
17 Plaintiff is appearing pro se, the Court must construe the allegations  
18 of the pleadings liberally and must afford Plaintiff the benefit of  
19 any doubt. See Karim-Panahi v. Los Angeles Police Department, 839  
20 F.2d 621, 623 (9<sup>th</sup> Cir. 1988). Moreover, in determining whether a  
21 complaint states a claim upon which relief may be granted, allegations  
22 of material fact are taken as true and construed in a light most  
23 favorable to the plaintiff. See Love v. United States, 915 F.2d 1242,  
24 1245 (9<sup>th</sup> Cir. 1989).

25 After careful review of the Complaint under these standards, the  
26 Court finds that the Complaint is time-barred. The Court therefore  
27 orders Plaintiff to show cause, on or before August 9, 2008, why this  
28 Court should not recommend dismissal with prejudice based on

1 expiration of the statute of limitations.

3 III

4 STATUTE OF LIMITATIONS

5 Plaintiff's Complaint is against Defendants Compton  
6 Sheriff's Department and John Does (Sheriff Officers) pursuant to 42  
7 U.S.C. §1983 for an incident that occurred on June 4, 2005. State  
8 statutes of limitations for personal injury actions apply to claims  
9 brought pursuant to the Federal Civil Rights Act, 42 U.S.C. §1983.  
10 Wilson v. Garcia, 471 U.S. 261, 276, 105 S.Ct. 1938, 85 L.Ed.2d 254  
11 (1985); Trimble v. City of Santa Rosa, 49 F.3d 583, 585 (9th Cir.  
12 1995); Usher v. City of Los Angeles, 828 F.2d 556 (9th Cir. 1987).

13 Federal civil rights claims are subject to the forum state's  
14 statute of limitations applicable to personal injury claims. Wilson  
15 v. Garcia, 471 U.S. 261, 279-80, 105 S.Ct. 1938, 85 L.Ed. 2d 254  
16 (1985); Owens v. Okure, 488 U.S. 235, 249, 109 S.Ct. 573, 102 L.Ed. 2d  
17 594 (1989); Fink v. Shedler, 192 F.3d 911, 914 (9th Cir. 1999). In  
18 California, this period is two years. (Cal. Code of Civil Procedure  
19 §335.1.)

20 While state law determines the applicable statute of limitations  
21 in a civil rights action, federal law determines when a cause of  
22 action accrues, and when the applicable limitations period begins to  
23 run. See, Bagley v. CMC Real Estate Corp., 923 F.2d 758, 760 (9th  
24 Cir. 1991), cert. denied, 502 U.S. 1091 (1992); Briley v. California,  
25 564 F.2d 849, 854-55 (9th Cir. 1977). A cause of action accrues under  
26 federal law when a plaintiff knows or has reason to know of the injury  
27 which is the basis of this action. Two Rivers v. Lewis, 174 F.3d 987  
28 (9th Cir. 1999); Cabrera v. City of Huntington Park, 159 F.3d, 374,

1 379-80 (9th Cir. 1998); Vaughan v. Grijalva, 927 F.2d 476, 480 (9th  
2 Cir. 1991); Norco Const., Inc. v. King County, 801 F.2d 1143, 1145  
3 (9th Cir. 1986); Cline v. Brusett, 661 F.2d 108, 110 (9th Cir. 1981);  
4 Gibson v. United States, 781 F.2d 1334, 1344 (9th Cir. 1986).

5 "The general rule in tort law is that the claim accrues at the  
6 time of the plaintiff's injury." Davis v. United States, 642 F.2d  
7 328, 330 (9th Cir. 1981), cert. denied, 455 U.S. 919, 102 S.Ct. 1273,  
8 71 L.Ed.2d 459 (1982). In certain cases, usually involving medical  
9 malpractice or hidden injuries, the claim does not accrue until the  
10 plaintiff knows or in the exercise of reasonable diligence should know  
11 of both the injury and its cause. Davis, 642 F.2d at 330-31.  
12 Discovery of the cause of one's injury, however, does not mean knowing  
13 who is responsible for it. The "cause" is known when the immediate  
14 physical cause of the injury is discovered. Davis, 642 F.2d at 331.  
15 With knowledge of the fact of injury and its cause, the malpractice  
16 plaintiff is on the same footing as any negligence plaintiff. The  
17 burden is then on the plaintiff to ascertain the existence and source  
18 of fault within the statutory period. It follows that diligence or  
19 lack of diligence in these efforts is irrelevant. Davis, 642 F.2d at  
20 331.

21 According to the Complaint, Plaintiff alleges on June 4, 2005,  
22 Defendants John Doe officers unlawfully choked Plaintiff from behind  
23 while another Defendant John Doe officer punched Plaintiff in the face  
24 and placed handcuffs on him. Plaintiff was face down on the ground  
25 while he was being punched by several Defendant John Doe officers.  
26 Plaintiff alleges he lost consciousness, sprained his neck, bruised  
27 his face, received abrasions on his head, and injured his back due to  
28 the actions of Defendants Compton Sheriff's Department and Defendants

1 John Doe Sheriff's officers. Plaintiff seeks monetary and punitive  
2 damages.

3 Plaintiff's claims against Defendants under §1983 began to accrue  
4 no later than June 4, 2005, as Plaintiff knew of or should have known  
5 at that time of the injuries that formed the basis of his claims.  
6 Fink, 192 F.3d at 914. Absent tolling, the statute of limitations for  
7 Plaintiff's claims expired on June 4, 2007. Plaintiff filed his  
8 Complaint on June 30, 2008, more than one year after the expiration of  
9 the limitations period. Accordingly, Plaintiff's Complaint is time-  
10 barred under §1983.

11  
12 **IV**

13 **ORDER TO SHOW CAUSE**

14 **IT IS THEREFORE ORDERED** that, on or before August 9, 2008,  
15 Plaintiff shall show cause, if there be any, why this Court should not  
16 recommend dismissal with prejudice of the Complaint based on the  
17 expiration of the statute of limitations. Plaintiff's response must  
18 explain why the Complaint is not barred by the statute of limitations.

19 Plaintiff is also advised that if he fails to timely respond to  
20 this Order to Show Cause, the Magistrate Judge will recommend that the  
21 Court dismiss the Complaint with prejudice based on expiration of the  
22 statute of limitations.

23  
24 DATED: July 9, 2008

25   
VICTOR B. KENTON  
26 UNITED STATES MAGISTRATE JUDGE  
27  
28